

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 09-00387-01-CR-W-FJG
	)	
CHARLES J. IRVING,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION

On December 15, 2009, an Indictment was filed charging defendant Irving with being a felon in possession of a firearm that had been transported in interstate commerce. On March 12, 2010, counsel for defendant filed a Motion for Determination of Competency. (Doc. # 20) On March 22, 2010, the defendant was ordered to undergo a psychiatric or psychological examination pursuant to 18 U.S.C. § 4241. (Doc. # 22)

On June 9, 2010, the Court held a hearing on the issue of the defendant's competency to stand trial. The parties stipulated that the Court could consider the Forensic Evaluation of May 25, 2010, prepared by Dr. David E. Morrow, a forensic psychologist at the Federal Detention Center in Englewood, Colorado. No other evidence was offered on the issue of defendant's competency to stand trial.

Dr. Morrow diagnosed Mr. Irving with an antisocial personality disorder<sup>1</sup>, but concluded there was no evidence to indicated he suffered from a major mental disorder, such an affective disorder, psychotic disorder or a developmental disorder that would impair his present ability to

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<sup>1</sup>According to Dr. Morrow an essential feature of the antisocial personality disorder "is a pervasive pattern of disregard for, and violation of, the rights of others that begins in childhood or early adolescence and continues into adulthood." (Forensic Evaluation at 7)

understand the nature and consequences of the court proceedings against him or to properly assist counsel in his defense. (Forensic Evaluation at 6 and 9) Mr. Irving was found to have a factual and rational understanding of the proceedings and demonstrated sufficient present ability to consult with his attorney with a reasonable degree of rational understanding. (Forensic Evaluation at 9) Thus, the evaluator concluded that the defendant is not presently suffering from a mental disease or defect that would render him incompetent to stand trial. (Id.) Based upon the information before the Court, it is

RECOMMENDED that the Court, after making an independent review of the record and applicable law, enter an order finding that defendant Charles J. Irving is not currently suffering from a mental disease or defect which would prevent him from understanding the nature and consequences of the proceedings against him or assisting in his own defense and that he is competent to stand trial.

Counsel are reminded they have ten days from the date of this Report and Recommendation within which to file and serve objections. A failure to file and serve timely objections shall bar an attack on appeal of the factual findings in this Report and Recommendation which are accepted or adopted by the district judge, except on grounds of plain error or manifest injustice.

/s/ Sarah W. Hays  
SARAH W. HAYS  
UNITED STATES MAGISTRATE JUDGE